

The Administrative Law Judge found that claimant had failed to establish injury or occupational disease arising out of and in the course of her employment for Stormont-Vail. He further found that claimant had failed to establish timely written claim against respondent, St. Francis Hospital. The decision as to Stormont-Vail in Docket No. 187,884 was not appealed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the reasons stated below, the Appeals Board agrees with and affirms the findings by the Administrative Law Judge.

Claimant worked as a registered nurse for respondent St. Francis Hospital from 1975 through June 1981. In 1987, six years after her employment with St. Francis Hospital, claimant underwent liver function studies which were abnormal. Her condition was diagnosed as hepatitis in 1988 and specifically diagnosed as hepatitis C in May 1993. Claimant did not begin working for the respondent, Stormont-Vail Hospital until 1989. Claimant argues that she was infected with Hepatitis C due to a specific incident, such as a needle stick or splattering of blood, during the course of her employment for respondent St. Francis Hospital. Claimant testifies that she was aware in 1988 when Hepatitis was first diagnosed that Hepatitis could be contracted through work in the health field. The evidence also establishes that she became disabled from her employment, at least in part, as early as 1989.

The Appeals Board finds that regardless whether the condition is considered an accidental injury or an occupational disease, it is barred by time limits for making a claim. K.S.A. 44-520 requires that written claim be made within 200 days from the date of accident or last payment of compensation. Respondent had no notice of a claim and the time for written claim was, therefore, not extended to one year under K.S.A. 44-557 (Ensley). The Appeals Board agrees with the conclusion of the Administrative Law Judge that claimant's date of accident would have been in 1988 when she was diagnosed as having hepatitis. However, even if May 1993, when she was specifically diagnosed as having hepatitis C, is treated as the date of accident, written claim is not timely. Written claim was not made until December 1993, more than 200 days after the May 1993 date.

If the claim is treated as an occupational disease, it was not made within one year of the date of disablement. Disablement is defined in K.S.A. 44-5a04 as becoming incapacitated partially or totally from performing the employee's work. Partial disablement occurred as early as 1989.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Bryce D. Benedict dated December 3, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Dana D. Arth, Lenexa, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director